

OFFICE OF THE MONITOR

NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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August 11, 2017

Via ECF

The Honorable Laura T. Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)

Dear Judge Swain:

We write to respectfully request an extension of time to file the Monitor's Fourth Report and recommend two modifications to the Consent Judgment (Dkt. No. 249) as described below.

First, we respectfully request an extension of 8 days to file the Monitor's Fourth Report on October 10, 2017 instead of October 2, 2017. This is the first request for an extension of time to file the Monitor's Fourth Report. We have discussed this extension with all Parties and they consent to this request.

Second, we respectfully recommend two modifications to the Consent Judgment (Dkt. No. 249). The first recommendation is a change in the calculation of time to develop the Monitor's Report beginning with the Monitor's Fifth Report. Appendix A attached to this letter identifies, in track changes, the proposed modifications to the two relevant sections of the Consent Judgment, Section XIX (Reporting Requirements and Parties' Right of Access), ¶¶ 1 and 17. We respectfully make this request because we believe the calculation of time by business days instead of calendar days results in a more reasonable and equitable timeline to develop all of the necessary components for the Monitor's Report and will help ensure the Monitor's Report is as reliable, accurate and comprehensive as possible.

We also write to recommend an extension of the deadline to institute a pilot project of the use of body-worn cameras to October 10, 2017 as described in the chart below.

Consent Judgment Provision	Description of Provision	Current Deadline ¹	Recommended Extension of Time
Section IX (Video Surveillance), ¶ 2(a)	Body Worn Camera Pilot – Pilot of 100 body-worn cameras.	Within one (1) year of the Effective Date	October 10, 2017

This is the fifth request to modify certain provisions of the Consent Judgment.² We have discussed our proposed recommendations to modify these provisions of the Consent Judgment with the Parties and they have consented.

Please do not hesitate to contact us if you have any questions or require further information on the proposed extensions and modifications.

Sincerely,

s/ Steve J. Martin

Steve J. Martin, Monitor

Anna E. Friedberg, Deputy Monitor

¹ The Effective Date of the Consent Judgment is November 1, 2015. (Docket Entry 260)

² See Appendix B.

Appendix A

Proposed Modifications to
§XIX. (Reporting Requirements and Parties' Right of Access)

1. The Department shall submit periodic compliance reports to the Monitor and Plaintiffs' Counsel ("Compliance Reports"). The Compliance Reports shall be provided to the Monitor and Plaintiffs' Counsel within ~~30-25 business~~ days after the end of each Reporting Period during the Agreement. The first Reporting Period shall begin on the Effective Date and end four months after the Effective Date. The second and third Reporting Periods after the Effective Date shall be a five-month period of time beginning on the day following the end of the previous Reporting Period. Thereafter, the length of the Reporting Period shall be a six-month period of time beginning on the day following the end of the previous Reporting Period.

...
17. The Monitor shall issue a Monitor Report within ~~90-75 business~~ days following each Reporting Period. The Monitor Reports shall be provided to the Parties in draft form for comment at least ~~30-25 business~~ days prior to their issuance, and the Parties shall provide the Monitor with their comments, if any, within ~~24-15 business~~ days after receipt. The Monitor shall consider the Parties' comments, and make any changes he or she deems appropriate, before issuing the final report. The Monitor Reports shall be written with due regard for the privacy interests of individual Inmates and Staff Members; federal, state and local laws regarding the privacy of such information; and the interest of the Department in protecting against the disclosure of non-public or privileged information. Consistent with such interests and laws, the Monitor shall redact individual-identifying information from Monitor Reports and any documents submitted with those reports, and shall give due consideration to the Department's requests to redact any other information. To the extent the Monitor declines to make redactions requested by the Department, the Monitor Report and any documents submitted with those reports shall be submitted to the Court under seal for the Court to consider the Department's proposed redactions before making the Monitor Report public.

Appendix B**Chart of Orders Modifying Certain Provisions of Consent Judgment**

Docket Entry	Date	Description of Order			
261	11/23/15	Effective Date set as November 1, 2015.			
266	01/05/16	Modification of certain deadlines.			
		Consent Judgment Provision	Description of Provision	Original Deadline ³	Granted Extension of Time
		Section V ¶ 21	Use of Force Reporting and Tracking-- Department to develop definitions for categories of institutional violence data	60 Days from Effective Date	Additional 30 Days
		Section XIII ¶ 1	Training--Department to develop new staff training programs (Use of Force policy, Crisis Intervention, Probe Team)	60 Days from Effective Date	Additional 60 days
		Section XIII ¶ 2	Training--Department to improve staff training (Defensive Tactics, Cell Extraction Team, and Investigator)	60 Days from Effective Date	Additional 60 days
		Section XIII ¶ 4	Training--Department to develop new Direct Supervision staff training	60 Days from Effective Date	Additional 60 days
		Section XVI ¶ 3	Inmate Discipline--Department to develop and implement an incentive system for inmates under 18	60 Days from Effective Date	Additional 30 Days
		Section XVI ¶ 4	Inmate Discipline--Department to develop and implement a disciplinary system for inmates under 18	60 Days from Effective Date	Additional 30 Days
268	03/04/16	Additional month for the Second and Third Monitoring Period.			
297	04/04/17	Modification of certain deadlines.			
		Consent Judgment Provision	Description of Provision	Original Deadline ⁴	Granted Extension of Time
		Section XIII (Training), ¶ 1(c)	Probe Team Training – Deployment of Probe Team Training to all Staff Members assigned to work regularly at any Intake Post.	Within 12 months of the Effective Date	December 31, 2017
		Section XIII (Training), ¶ 2(b)	Cell Extraction Team Training – Deployment of the Cell Extraction Team Training to all Staff Members	Within 12 months of the Effective	December 31, 2017

³ The Effective Date of the Consent Judgment is November 1, 2015. (Docket Entry 260)

⁴ The Effective Date of the Consent Judgment is November 1, 2015. (Docket Entry 260)

			regularly assigned to Special Units with cell housing.	Date		
		Section XIII (Training), ¶ 4(b)	Direct Supervision Training – Deployment of the Direct Supervision Training to all Staff Members assigned to work regularly in Young Inmate Housing Areas.	Within 9 months of the Effective Date	April 30, 2018	
		Section V (Use of Force Reporting & Tracking), ¶ 18 Section X (Risk Management), ¶ 16	Case Management System – to be developed and implemented.	December 1, 2016	<i>Develop:</i> August 31, 2017 <i>Implement:</i> December 31, 2017	